

PART V.

MARRIED INSTITUTIONALIZED INDIVIDUALS' ELIGIBILITY AND PATIENT
PAY.

SUBPART I.

DEFINITIONS.

12VAC30-110-720. Definitions.

The following words and terms when used in this part, shall have the following meanings unless the context clearly indicates otherwise:

"Acceptable medical evidence" means either (i) certification by a nursing home preadmission screening committee; or (ii) certification by the individual's attending physician.

"Actual monthly expenses" means the total of:

1. Rent or mortgage, including interest and principal;
2. Taxes and insurance;
3. Any maintenance charge for a condominium or cooperative; and
4. The utility standard deduction under the Food Stamp Program that would be appropriate to the number of persons living in the community spouse's household, if utilities are not included in the rent or maintenance charge.

"Applicable percent" means that percentage as defined in §1924 (d)(3)(B) of the Social Security Act.

"As soon as practicable" (as it relates to transfer of resources from the institutionalized spouse to the community spouse for the purpose of the community spouse resource allowance) means within 90 days from the date the local agency takes action to approve the institutionalized spouse's initial eligibility for medical assistance long-term care services when the institutionalized spouse agrees to transfer resources to the community spouse.

"At the beginning of the first continuous period of institutionalization" means the first calendar month of a continuous period of institutionalization in a medical institution or receipt of a Medicaid community-based care waiver service or hospice.

"Community spouse" means a person who is married to an institutionalized spouse and is not himself an inpatient at a medical institution or nursing facility.

"Community spouse monthly income allowance" means an amount by which the minimum monthly maintenance needs allowance exceeds the amount of monthly income otherwise available to the community spouse.

"Community spouse resource allowance" means the amount of the resources in the institutionalized spouse's name which can be transferred to the community spouse to bring the resources in the community spouse's name up to the protected resource amount.

"Continuous period of institutionalization" means 30 consecutive days of institutional care in a medical institution or nursing facility, or 30 consecutive days of receipt of Medicaid waiver or hospice services, or 30 consecutive days of a combination of institutional, waiver, and hospice services. Continuity is broken only by 30 or more days absence from a medical institution or 30 or more days of non-receipt of waiver services.

"Couple's countable resources" means all of the couple's non-excluded resources regardless of state laws relating to community property or division of marital property. For purposes of determining the combined and separate resources of the institutionalized and community spouses when determining the institutionalized spouse's eligibility, the couple's home, contiguous property, household goods and one automobile are excluded.

"Department" means the Department of Medical Assistance Services.

"Dependent child" means a child under age 21 and a child age 21 years old or older, of either spouse, who lives with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

"Dependent family member" means a parent, minor child, dependent child, or dependent sibling, including half brothers and half sisters and siblings gained through adoption, of either member of a couple who resides with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

"Exceptional circumstances resulting in significant financial duress" means circumstances other than those taken into account in establishing the spousal maintenance allowance for which the community spouse incurs expenses in amounts that he cannot be expected to pay from the spousal maintenance allowance or from amounts held in the community spouse resource allowance.

"Excess shelter allowance" means the amount by which the actual monthly expense of maintaining the community spouse's residence plus the standard utility allowance exceeds the excess shelter standard.

"Excess shelter standard" means 30% of the monthly maintenance needs standard.

"Family member's income allowance" means an allowance for each dependent family member residing with the community spouse. The family member's income allowance is

equal to 1/3 of the amount by which the monthly maintenance needs standard exceeds the family member's income.

"Federal Poverty Level" or "FPL" means the annual Federal Poverty Level as computed by the Office of Management and Budget and published in the Federal Register.

"First continuous period of institutionalization" means the first day of the first month of the first continuous period of institutionalization, which began on or after September 30, 1989.

"Initial eligibility determination" means:

1. An eligibility determination made in conjunction with a medical assistance application filed during an individual's most recent continuous period of institutionalization; or
2. The initial re-determination of eligibility for a medical assistance eligible institutionalized spouse after being admitted to an institution or receiving medical assistance community-based care waiver services.

"Initial re-determination" means the first re-determination of eligibility for a medical assistance eligible spouse which is regularly scheduled, or which is made necessary by a change in the individual's circumstances.

"Institutionalized spouse" means an individual who is an inpatient at a medical institution, who is receiving medical assistance community-based waiver services, or who has elected hospice services; and who is likely to remain in such facility or to receive waiver or hospice services for at least 30 consecutive days, and who has a spouse who is not in a medical institution or nursing facility.

“Likely to remain in an institution” means a reasonable expectation based on acceptable medical evidence that an individual will be in a medical institution or will receive medical assistance waiver or hospice services for 30 consecutive days, even if receipt of institutional care or waiver or hospice services actually terminates in less than 30 days. Individuals who have been screened and approved for medical assistance community-based waiver services or who have elected hospice services shall be considered likely to remain in an institution.

“Maximum spousal resource standard” means the maximum amount of the couple’s combined countable resources established for a community spouse to maintain himself in the community calculated in accordance with §1924(f)(2)(A)(ii)(II) of the Social Security Act. This amount increases annually by the same percentage as the percentage increase in the Consumer Price Index for all urban consumers between September 1988 and the September before the calendar year involved as required in §1924(g) of the Social Security Act.

“Maximum monthly maintenance needs standard” is the upper limit, i.e., cap, established under §1924(d)(3)(C) of the Social Security Act.

"Medical institution" or "nursing facility" means hospitals and nursing facilities (including ICF/MR), consistent with the definitions of such institutions found in the Code of Federal Regulations at 42 CFR 435.1009, 440.40 and 440.150 and which are authorized under Virginia law to provide medical care.

“Minimum monthly maintenance needs allowance” means the monthly maintenance needs standard, plus an excess shelter allowance, if applicable, not to exceed the maximum monthly maintenance needs standard. The minimum monthly maintenance needs allowance is the amount to which a community spouse’s income is compared in order to determine the community spouse’s monthly income allowance.

"Minor " means a child under age 21, of either spouse, who lives with the community spouse.

“Monthly maintenance needs standard” means an amount no less than 150% of 1/12 of the Federal Poverty Level for a family of two in effect on July 1 of each year.

"Other family member's" means dependent children, and dependent parents and siblings of either member of a couple who reside with the community spouse.

"Otherwise available income or resources" means income and resources which are legally available to the community spouse and to which the community spouse has access and control.

"Promptly assess resources" means within 45 days of the request for resource assessment unless the delay is due to nonreceipt of documentation or verification, if required, from the applicant or from a third party.

"Protected period" means a period of time, not to exceed 90 days after an initial determination of medical assistance eligibility. During the protected period, the amount of the community spouse resource allowance will be excluded from the institutionalized spouse's countable resources if the institutionalized spouse expressly indicates his intention to transfer resources to the community spouse.

"Resource assessment" means a computation, completed by request or upon medical assistance application, of a couple's combined countable resources at the beginning of the first continuous period of institutionalization of the institutionalized spouse beginning on or after September 30, 1989.

“Resources” means real and personal property owned by a medical assistance applicant or his spouse. Resources do not include resources excluded under subsection (a) or (d) of section 1613 of the Social Security Act and resources that would be excluded under section 1613(a)(2)(A) but for the limitation on total value described in such section.

“Significant financial duress” means, but is not limited to, threatened loss of basic shelter, food or medically necessary health care or the financial burden of caring for a disabled child, sibling or other immediate relative.

“Spousal protected resource amount” means (at the time of medical assistance application as an institutionalized spouse,) the greater of: (i) the spousal resource standard in effect at the time of application; (ii) the spousal share, not to exceed the maximum spousal resource standard in effect at the time of application; (iii) the amount actually transferred to the community spouse by the institutionalized spouse pursuant to a court spousal support order; or the (iv) amount of resources designated by a Department hearing officer.

"Spousal resource standard" means the minimum amount of a couple's combined countable resources calculated in accordance with §1924(f)(2)(A)(i) of the Social Security Act necessary for the community spouse to maintain himself in the community. The amount increases each calendar year after 1989 by the same percentage increase as in the Consumer Price Index as required by §1924(g) of the Social Security Act.

"Spousal share" means ½ of the couple's total countable resources at the beginning of the first continuous period of institutionalization, as determined by a resource assessment.

"Spouse" means a person who is legally married to another person under Virginia law.

"State Plan" means the State Plan for Medical Assistance.

"Undue hardship" means [~~denial of medical assistance eligibility due to excess resources would result in the institutionalized spouse being removed from the institution and unable to purchase life sustaining medical care when the applicant has exhausted all legal avenues to access the resources~~ due to reasons permitted under that the provisions listed under 12 VAC 30-110-831 have been met. The absence of an undue hardship provision would result in the institutionalized spouse being ineligible for Medicaid payment of long-term care services and unable to purchase life sustaining medical care.]

"Waiver services" means medical assistance reimbursed home or community-based services covered under a §1915(c) waiver approved by the Secretary of the United States Department of Health and Human Services.

12VAC30-110-741. Resource assessment required.

A resource assessment shall be completed by the entity determining medical assistance eligibility on all medical assistance applications for married institutionalized individuals who have a community spouse. If an applicant alleges his marital status is unknown, it shall be his responsibility to establish his marital status. It shall be the applicant's responsibility to locate his community spouse. If attempts to [establish marital status or] locate the separated spouse are unsuccessful or the community spouse does not provide the required information necessary to complete the resource assessment, the medical assistance eligibility application will be denied due to inability to complete the required resource assessment [, unless undue hardship, as defined herein, is met].

12VAC 30-110-831.

A. Undue hardship can be claimed when the value of resources owned on the first day of the first month of the first continuous period of institutionalization cannot be verified after both spouses have exhausted all avenues to document the value of the resources owned on that day. When hardship is claimed, the spousal resource standard shall be used as a substitute for the spousal share when calculating the spousal protected resource amount.

~~B. Undue hardship shall not be claimed when an applicant is determined ineligible for Medicaid because:~~

~~1. The institutionalized spouse fails to establish his marital status; or~~

~~2. The community spouse refuses or fails to disclose or verify the value of resources owned by the community spouse.]~~

[B. Undue hardship can also be claimed if each of the following criteria is met:

1. The applicant establishes by affidavit specific facts sufficient to demonstrate (a) that he has taken all steps reasonable under the circumstances to locate the spouse, to obtain relevant information about the resources of the spouse, and to obtain financial support from the spouse; and (b) that he has been unsuccessful in doing so;

Absent extraordinary circumstances, determined by DMAS, the requirements of paragraph (B)(1)(a) cannot be met unless the applicant and spouse have lived separate and apart without cohabitation and without interruption for at least 36 months.

2. Upon such investigation as DMAS may undertake, no facts are revealed that refute the statements contained in the applicant's affidavit, as required by paragraph (B)(1);

3. The applicant has assigned to DMAS, to the full extent allowed by law, all claims he or she may have to financial support from the spouse; and

4. The applicant cooperates with DMAS in any effort undertaken or requested by DMAS to locate the spouse, to obtain information about the spouse's resources and/or to obtain financial support from the spouse.]